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| 09/998,502 | 11/30/2001 | Eric P. Plourde | 769-303 | 6555 |

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3677

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/998,502
Filing Date: November 30, 2001
Appellant(s): PLOURDE ET AL.

Gerald Levy (24,419)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 29, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

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(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-4 fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

6217215

Tomic

04-2001

(10) *Grounds of Rejection*

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,217,215 to Tomic. This rejection is set forth in a prior Office Action, mailed on May 25, 2004.

(11) *Response to Appellant's Argument(s)*

Appellant's arguments filed in the Appeals Brief of November 29, 2004 have been fully considered but they are not persuasive. Regarding Appellant's beginning arguments on page 4, second paragraph, that appellant's claimed invention is patentably distinct over Tomic because the structural elements or male ribs **44, 52** of appellant's invention do not undergo inward movement or flexing into grooves **64, 68** relative to an interlocking operation is found non-persuasive and moot because appellant's remarks on page 4, second paragraph are directed to the structural arrangement of Tomic's profile fastener as seen in Fig. 7.

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It is the modification of this structural arrangement that is disregarded by appellant and which is the focal point of the rejection.

Tomic discloses corresponding structural elements or male ribs **577, 580** as seen in the Examiner's appendix figures 7A and 7B, accompanying this Examiner's Answer, which correspond to the male ribs **44, 52** at profile **37** in appellant's figure 2. Fig. 7A show profiles **571** and **572** which interlock together. Profile **571** includes ribs **574-576** equatable to ribs **26, 30, 32** of profile **22** in appellant's drawing figure 2. Further, profile **572** includes ribs **578, 579** corresponding to appellant's rib **48**. If one were to observe the structural arrangement of Fig. 7A (Tomic's Fig. 7) in comparison to Fig. 2 of appellant's invention, the difference would be that profile **572** includes one additional rib **578** or **579** between ribs **577** and **580** respectively.

Appellant's remarks that any two ribs adjacent either rib **578** or **579** cannot flex without flexing inwardly teaches away from the limitations presented in independent claim 1. Here, this point is considered moot because appellant only considers the structural arrangement shown in Fig. 7 or Fig. 7A, not the applied obviousness modification of Tomic's structure as seen in Fig. 7B.

Figure 7B illustrates an obvious omission of rib **578** from profile **572**. Since, it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art (*In re Karlson*, 136 USPQ 184). Thus, it can be envisaged when viewing Fig. 7B, the ribs **577** and **580** of profile **572** are adjacent to just one rib **579** instead of two ribs and during inter-locking operation, rib **580** can move upwardly and rib **577** can move downwardly, thereby flexing outwardly without flexing inwardly into the grooves as claimed.

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Accordingly, this obvious-type approach taken by the Examiner provides substantially the same structural arrangement of appellant's profile 37 as compared to profile 572 of Fig. 7B. Further, since there being no substantial difference between the profiles, the Examiner believes the same end result and or function is achieved by Tomic equally as well as appellant's claimed invention.

The motivation used by the Examiner to modify Tomic is taken from the disclosure of Tomic (col. 8, lines 16-19), where Tomic discloses that the inter-lockable profiles 571 and 572 may be constructed to have any number of ribs. Here, appellant argues on page 5, that the above statement is inadequate to serve as prior art against appellant's invention, thus, the Examiner has no reason(s) or motivation to modify Tomic (Fig. 7). Further, appellant states that the phrase "any number" is essentially an "unbounded range". The Examiner disagrees with appellant's viewpoint, since claims are given the broadest reasonable interpretation in light of the specification. The Examiner takes the position that one of ordinary skill in the art would interpret "any number" to mean one or more such ribs relative to re-closable bag fasteners within the art, such an interpretation would not only be obvious but reasonable and not so broad to encompass a large number as asserted by appellant. Therefore, the Examiner believes the obvious-type rejection made includes a reasonable motivation with an equally effective reasonable outcome of success and the obvious-type rejection made is proper.

For the foregoing reasons stated above, the Examiner believes claims 1-4 are unpatentable over Tomic as an obvious-type rejection and is sustained.

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Respectfully submitted,

André L. Jackson


Patent Examiner


AU 3677

ALJ

January 12, 2005

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APPENDIX

FIGS. 7A and 7B

FIG. 7A

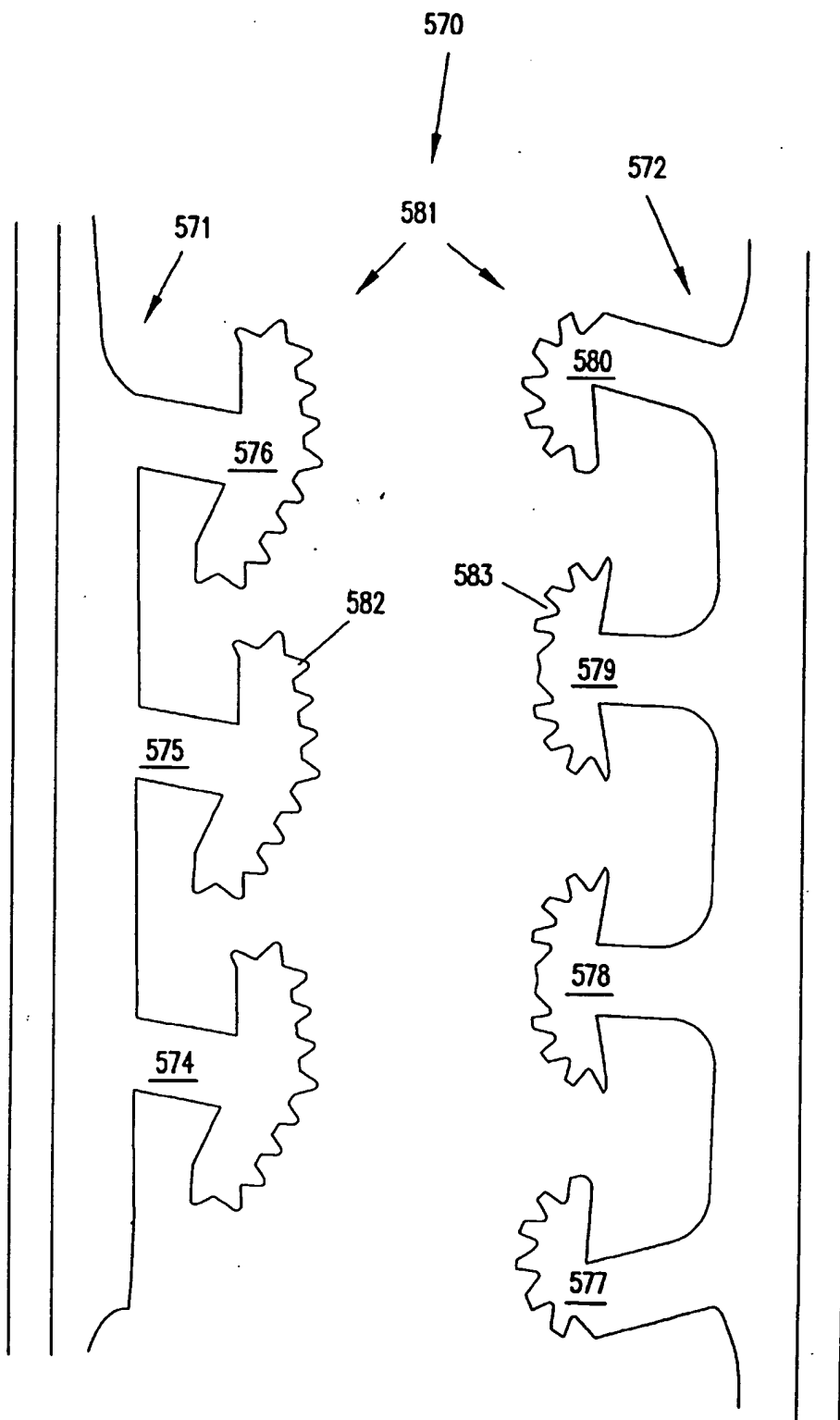


FIG. 7B

